

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI LP, OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPKO LLC, OPENAI
GLOBAL LLC, OAI CORPORATION, LLC,
and OPENAI HOLDINGS, LLC,

Defendants.

Civil Action No. 1:23-cv-11195 (SHS) (OTW)

DAILY NEWS, LP, et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Civil Action No. 1:24-cv-3285 (SHS) (OTW)

STIPULATION AND PROPOSED [ORDER] REGARDING PROTECTIVE ORDER

WHEREAS, Plaintiff The New York Times Company (“The Times”) and Defendant Microsoft Corporation (“Microsoft”) have continued to meet and confer regarding Dkt. 221 (The Times’s motion to compel Microsoft to re-review the documents it designated as “Highly Confidential – Attorneys’ Eyes Only”);

WHEREAS, the parties agree that the Stipulated Protective Order entered in the consolidated case brought by The New York Daily News (ECF 129, No. 1:24-cv-03285-SHS-OTW) rather than the Stipulated Protective Order originally entered in The Times’s lawsuit (ECF 127, No. 1 :23-cv-11195-SHS-OTW) will govern these consolidated proceedings;

WHEREAS, The Times and Microsoft have reached an agreement to modify Paragraph 14 of the Stipulated Protective Order to allow certain identified individuals designated by The Times to view documents marked by Microsoft as HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY, so long as those documents do not relate to licensing/data access agreements and/or negotiations over such agreements, as set forth more fully below;

WHEREAS, good cause exists for the modification of the Stipulated Protective Order pursuant to Federal Rule of Civil Procedure 26(c) to enable continued designation of competitively sensitive commercial material by Microsoft while also fostering limited disclosure as needed for The Times’s counsel to advise their client;

THEREFORE, the Parties, through counsel, agree as follows:

1. All parties agree that that the Stipulated Protective Order entered in the consolidated case brought by The New York Daily News (ECF 129, No. 1:24-cv-03285-SHS-OTW) rather than the Stipulated Protective Order originally entered in The Times’s lawsuit (ECF 127, No. 1 :23-cv-11195-SHS-OTW) will govern these consolidated proceedings.

2. Microsoft and The Times request that the Court enter the following modification to Paragraph 14 of the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW), as reflected in the underlined text:

14. No person subject to this Protective Order other than the producing party shall disclose any of the Discovery Material designated by the producing party as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to any other person whomsoever, except to:

- (a) the recipient’s outside counsel of record in this action, as well as employees of said outside counsel of record to whom it is reasonably necessary to disclose the information for this litigation;
- (b) designated inhouse counsel of the recipient to whom disclosure is reasonably necessary for this litigation, provided such person has first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto. Within 30 days of the entry of this Protective Order, a receiving party may designate by name, in writing, up to five (5) in-house attorneys who are permitted to view materials designated “HIGHLY CONFIDENTIAL– ATTORNEYS’ EYES ONLY,” provided that any attorneys so designated may not have a role through which they could use such materials to engage in Competitive or Editorial Decision-Making.¹ In addition to the foregoing, and

¹ “Competitive or Editorial Decision-Making” means the action or process of making a business or journalistic decision or resolving a non-legal question relating to a competitor, potential competitor, customer, journalist, opinion writer, editor, video producer, audio producer, or distribution partner regarding contracts, marketing, pricing, product, service development or design, product, or service offering, research and development, mergers and acquisitions, or licensing, acquisition, funding, enforcement of intellectual property, publishing, writing, editing, broadcasting, or public speaking. It does not include legal advice provided in connection with

with respect to materials designated as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY by Microsoft, the following individuals designated by The Times—A.G. Sulzberger, Meredith Levien, Diane Brayton, and Rebecca Grossman-Cohen, so long as (1) those documents do not relate to actual or potential licensing/data access agreements or negotiations regarding such agreements, and (2) each of these individuals executes an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto.

- (c) experts of the recipient to whom disclosure is reasonably necessary for this litigation, provided such persons have first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto;
- (d) the court and its personnel;
- (e) court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary for this litigation, provided such persons have first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto; or
- (f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

litigation, potential litigation, or regulatory matters, nor does it include work performed as part of a trial team or to keep management advised on the progress or status of litigation, potential litigation, or regulatory matters.

SO STIPULATED AND AGREED.

Dated: October 30, 2024

/s/ Ian Crosby

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SO ORDERED.

ONA T. WANG
United States Magistrate Judge

Dated: _____
New York, New York

ATTESTATION

Pursuant to S.D.N.Y. Electronic Case Filing Rule 8.5, I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the content and have authorized this filing.

Dated: October 30, 2024

ORRICK, HERRINGTON &
SUTCLIFFE LLP

By: /s/ Annette L. Hurst

Annette L. Hurst